

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 5969 OF 2015

RESHMA D/O SHAIKH NOORMOHAMMAD AND ORS
VERSUS
THE STATE OF MAHARASHTRA & ANR

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Advocate for Applicants : Mr. Shaikh Mazhar A. Jahagirdar
APP for Respondent No.1: Ms. R. P. Gour
Advocate for Respondent No.2 : Mr. H.I. Pathan

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CORAM : V. K. JADHAV, J.
DATED : 13th OCTOBER, 2016

PER COURT:-

1. By consent of the parties, heard finally, at admission stage.
2. The applicants are seeking quashment of complaint bearing R.T.C. No. 158 of 2013 pending in the file of learned J.M.F.C. Ahmednagar, for the offences punishable under Sections 494, 109, 34 of I.P.C..
3. Brief facts, giving rise to the present criminal application are as follows:-

The applicants are original accused in private complaint bearing R.T.C. No. 158 of 2013 filed by respondent No.2. It has alleged in the complaint that accused-applicant No.1 is wife of

respondent No.2 original complainant and their marriage is solemnized as per Muslim Shariya on 12.11.2006 at Ahmednagar. Out of their marital wedlock, the daughter Sidra also born to them. It has further alleged in the complaint that their relations as husband and wife is still in existence. It has further alleged in the complaint that accused-applicant No.1 however, got married with accused No.2 on 28.4.2011 at about 7.00 p.m. at Aurangabad. It has alleged in the complaint that accused Nos. 3 to 18, though having knowledge of marriage of the complainant, participated in the said marriage and helped accused-applicant No.1 for performing illegal marriage. Learned Magistrate pleased to examine the complainant and by order dated 26.2.2014 issued process against applicant accused No.1 for the offence punishable under Section 494 of I.P.C. and against accused Nos. 2 to 18 for the offences punishable under Sections 494 r.w. 109 of I.P.C. Hence, this application is filed by the applicants seeking quashment of complaint R.T.C. No.158 of 2013 pending before the learned J.M.F.C. Ahmednagar.

4. Learned counsel for the applicants submits that the present applicant No.1 alongwith her minor daughter have filed Criminal Misc. application No.140 of 2009 for grant of maintenance under the provisions of Section 125 of Cr.P.C. against the present respondent No.2. In the said proceedings, present respondent No.2 has taken a

stand that there was dissolution of marriage between himself and present applicant No.1 on 19.12.2009 before Kazi Shariya, as per Muslim Shariyat and to substantiate the same has produced some documents on record. Learned counsel submits that present respondent No.2, in order to substantiate the said ground, examined witnesses before the Magistrate in the proceeding of criminal Misc. application No. 140 of 2009 and succeeded in proving that on 19.12.2009 the marriage between him and present applicant No.1 came to be dissolved. Even respondent No.2 has also pointed out to the Magistrate, in the said proceedings, that the application for grant of maintenance since filed on 4.12.2009, applicant No.1 is not entitled to claim any maintenance. In para 14 of the judgment of said Criminal Misc. application No. 140 of 2009, learned Magistrate has discussed the evidence and accordingly held that the present applicant No.1 is not entitled for maintenance and thus by order dated 10.5.2016 granted maintenance to minor daughter Shidra only. Learned counsel submits that respondent No.2 by suppressing all these material facts, filed complaint bearing criminal Case No. 158 of 2013 against present applicants for having committed offences punishable under Sections 494 r.w. 109 of I.P.C.

Learned counsel for the applicants further submits that even

assuming that the allegations have been made about the second marriage against applicant No.1 and against other applicants for facilitating the said crime, still then even accepting the allegations made in the complaint as it is, no offence is made out against any of the applicants. Learned counsel submits that Section 252 of Mohammedan Law speaks about essentials of a marriage and in order to prove the validity of such marriage, there should be a proposal made by or on behalf of one of the parties to the marriage, and an acceptance of the proposal by or on behalf of the other, in the presence of hearing of two male or one male and two female witnesses, who must be sane and adult Mohammedan. The proposal and acceptance both must be expressed at one meeting. Neither writing nor any religious ceremony is essential.

Learned counsel, in order to substantiate his contentions, places reliance on the judgment of Madras High Court in the case of ***A. Abdul Rahim vs. Julaiga Beevi and Anr. reported in (2001) 2 MLJ 822.***

5. Learned counsel for respondent No.2 submits that in fact, the present applicant No.1 has filed an application bearing Criminal Misc. application No. 140 of 2009 for grant of maintenance with averments that her marriage with respondent No.2 herein is still subsisting.

Respondent No.2 though raised certain grounds in the said proceeding before the Magistrate, about non existence of the said marriage, still then, it is a matter of record that present applicant accused No.1 has suppressed material facts in the said criminal Misc. application. Learned counsel submits that respondent No.2 complainant has given reference to all pending proceedings including Criminal Misc. application No. 140 of 2009 seeking maintenance. Learned counsel submits that there is sufficient evidence on record to show that applicant No.1 has performed second marriage with applicant No.2 illegally and even she had given birth to one daughter out of said wedlock. Prima facie, there is sufficient evidence to take cognizance of the complaint and the Magistrate has rightly issued process against the accused.

Learned counsel for respondent No.2 in order to substantiate his contentions, places reliance on the judgment of Supreme Court in the case of ***Mushtaq Ahmad vs. Mohd. Habibur Rehman Faizi and others, reported in (1996) 7 SCC 440***, wherein the Supreme Court has given reference of para 103 of its earlier judgment in the case of ***State of Haryana vs. Bhajan Lal***. Learned counsel submits that power of quashing a criminal proceeding should be exercised very sparingly and that too in the rarest of rare cases. The court will not be justified in embarking upon an enquiry as to the reliability or

genuineness or otherwise of the allegations made in the F.I.R. or the complaint.

6. I have also heard learned A.P.P. for respondent No.1-State.

7. On careful perusal of judgment and order passed by the J.M.F.C. Ahmednagar in Criminal Misc. application No. 140 of 2009, it appears that the present respondent No.2 has raised a ground in the said proceeding that the marriage between himself and present applicant No.1 came to be dissolved. In order to substantiate the said ground, respondent No.2 has examined witnesses to establish the fact of dissolution of marriage. Respondent No.2 original complainant herein has brought evidence before the Court and succeeded in proving the same. Even present respondent No.2 has produced before the Magistrate, a copy of entire proceedings initiated before the Kazi and same is marked Exh.97 and translation of the said proceeding is marked at Exh.98. It is pertinent to note that even present respondent No.2 has examined himself in the said proceeding before the Kazi. Respondent No.2 has thus proved before the Magistrate that as per the decision given in the said proceeding by the Kazi, marriage between himself and applicant No.1 came to be dissolved w.e.f. 19.12.2009.

8. In the criminal case No. 159 of 2013, which is subject matter of present criminal application, respondent No.2 original complainant has made averments that his relation with applicant No.1 as husband and wife is still subsisting and that the applicant original accused No.1 has performed second marriage illegally with applicant No.2 on 28.4.2011 at about 7.00 p.m. at Aurangabad. It is pertinent to note that respondent No.2 has taken almost contrary stand as against the stand taken in the said criminal Misc. application No. 140 of 2009 and filed present complaint before the Magistrate bearing Criminal Case No. 158 of 2013 against the present applicants for having committed offences punishable under Sections 494 r.w. 109 of I.P.C. almost after a period of two years of happening of alleged incident. In my considered opinion, this case falls under the category of rarest of rare case. This is a fit case to exercise inherent powers under Section 482 of Cr.P.C. to quash and set aside the complaint bearing R.T.C. No. 158 of 2013, which is nothing but abuse of process of Court.

9. So far as the essentials for performing Muslim marriage is concerned, the same loses its significance, since continuation of proceeding in criminal case No. 58 of 2013 is sheer abuse of process of the Court. Accordingly, I proceed to pass the following order:-

O R D E R

- I. Criminal application is hereby allowed in terms of prayer clause "B".
- II. Criminal application is accordingly disposed of.

(V. K. JADHAV, J.)

rlj/